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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID L. CHALUPSKY, JAMES M. OSTROWSKI, and  
THOMAS L. STACHURA

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Appeal 2009-007626  
Application 10/656,652  
Technology Center 2400

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Before JAY P. LUCAS, ST. JOHN COURtenay III, and THU A. DANG,  
*Administrative Patent Judges.*

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

## I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-52. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

### A. INVENTION

According to the Appellants, the invention relates to managing a speed at which data is transmitted between network adaptors (Spec. 1, ¶ [0001]).

### B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary:

1. A method comprising:

selectively determining a new transmission speed different from a current transmission speed between a local network device and a linked network device in response to a speed change event; and

transmitting a speed change request and the new transmission speed to the linked network device to request the local and linked network devices to communicate at the new transmission speed, wherein the transmitting occurs while maintaining a linked exchange between the local and linked network devices.

### C. REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Robert	US 2004/0003296 A1	Jan.01, 2004
		(filed on Apr. 16, 2001)
Murase	US 6,298,042 B1	Oct. 02, 2001

Claims 1, 2, 4-12, 14-19, 21-24, 26-34, 36, 38, 39, 41, 42, 44, 45, and 47-51 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Robert.

Claims 3, 13, 20, 25, 35, 37, 40, 43, 46, and 52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robert in view of Murase.

### II. ISSUE

The dispositive issue is whether the Examiner has erred in determining that Robert teaches “transmitting a speed change request and the new transmission speed to the linked network device” (claim 1). In particular, the issue turns on whether Robert’s new transmission speed is transmitted with a speed change request.

### III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

*Robert*

1. Robert discloses controlling a physical layer transceiver by setting the physical layer transceiver into a low-power operation, wherein the physical layer transceiver is configured for operating at a selected data

rate, from one of a high-speed data rate and a low data rate, according to an autonegotiation routine (Abstract).

2. In response to a low-power request, the controller is configured for resetting the selected data rate to the low data rate and restarting the autonegotiation for the low data rate within the physical layer transceiver (p.1, ¶ [0010]).

3. For example, the controller would set bits 8-5 of Register R4 to 0001 binary, causing the physical layer transceiver to advertise its best capabilities as 10Mbps half duplex, and then restarts the autonegotiation process by restarting bit 9 of the management control Register R0 to “1” (p. 2, ¶ [0024]).

#### IV. ANALYSIS

*35 U.S.C. § 102(e)*

*Claims 1, 2, 4-12, 14-19, 21-24, 26-34, 36, 38, 39, 41, 42, 44, 45, and 47-51*

The Examiner finds that “clearly the teachings of Robert disclose a method by which a high data rate (transmission speed) may be renegotiated to a low data rate (new transmission speed) in response to a powerdown request (speed change event)” (Ans. 12). However, Appellants contend that “the Examiner has failed to indicate how Robert anticipates the claimed transmission of a new transmission speed” (App. Br 14). In particular, Appellants argue that “the Examiner appears to indicate that Robert only transmits a ‘power down request’ and not the claimed ‘new transmission speed’” (*id.*, emphasis omitted). That is, according to Appellants, “resulting in a new transmission speed fails to anticipate transmission of any transmission speed” (Reply Br. 5).

Upon review of the records, we agree with Appellants. In particular, we do not find any teachings of “transmitting a speed change request and the new transmission speed to the linked network device” (claim 1, emphasis added) in the sections of Robert cited by the Examiner.

Robert discloses selecting the data rate from one of a high-speed and a low-speed (FF 1). We find Robert to disclose selectively determining a new transmission speed as required by claim 1.

However, Robert discloses that in response to a low-power request, the controller is configured, such as setting various register bits to predetermined values, for resetting the selected data rate to the low data rate, and restarting the autonegotiation (FF 2-3). That is, Robert does not disclose by any teaching of a new transmission speed being transmitted with a speed change request. Thus, though we agree with the Examiner that Robert discloses “a high data rate (transmission speed) may be renegotiated to a low data rate (new transmission speed)” (Ans. 12), we agree with Appellants that “resulting in a new transmission speed fails to anticipate transmission of any transmission speed” (Reply Br. 5).

Accordingly, we find that Appellants have shown that the Examiner erred in rejecting representative claim 1, claims 14, 21, and 23 falling therewith, and claims 2, 4-12, 15-19, 22, 24, 26-34, 36, 38, 39, 41, 42, 44, 45, and 47-51 depending respectively therefrom over Robert.

*35 U.S.C. § 103(a)*

*Claims 3, 13, 20, 25, 35, 37, 40, 43, 46, and 52*

We also find that Murase does not cure these noted deficiencies of Robert. As such, we will also reverse the rejection of claims 3, 13, 20, 25, 35, 37, 40, 43, 46, and 52 over Robert in view of Murase.

**V. CONCLUSION AND DECISION**

The Examiner's rejection of claims 1, 2, 4-12, 14-19, 21-24, 26-34, 36, 38, 39, 41, 42, 44, 45, and 47-51 under 35 U.S.C. § 102(e) and of claims 3, 13, 20, 25, 35, 37, 40, 43, 46, and 52 under 35 U.S.C. § 103(a) is reversed.

**REVERSED**

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